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WILSON, KAITLIN A				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/549,467

Applicant(s)

STOWE, STEFAN

Examiner

KAITLIN A. WILSON

Art Unit

3636

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11-30 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 11-30 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 September 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/CI/CDC)
- Paper No(s)/Mail Date 09/14/2005
- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date ____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____

DETAILED ACTION

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 11-30 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over Claims 11-30 of copending Application No. 10/549,517. Although the conflicting claims are not identical, they are not patentably distinct from each other because Application No. 10/549,517 recites all the claim limitations of the current application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

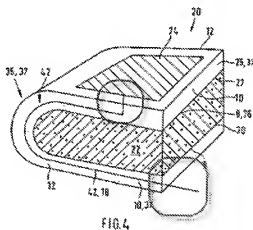
Information Disclosure Statement

3. The information disclosure statement (IDS) submitted on 09/14/2005 is being considered by the examiner.

Drawings

4. The drawings are objected to because Figure 4 is unclear as to what is shown. As seen below, the drawing contains a line extending outward from the lower part of the figure as well as a line extending up from middle of the upper air distribution device. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be

canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.



Claim Objections

5. Claim 13 is objected to because of the following informalities: page, 14, "arranged a space". For the purpose of examination the examiner presumes "arranged a space" reads "arranged in a space".

Appropriate correction is required.

Claim Rejections - 35 USC § 112

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claim 11-30 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

8. With regards to Claim 11, the claim discloses "an upper air distribution device at a front side of the cushion; a lower air distribution device at a rear side facing away from the passenger". It is unclear if the front side is the top of the element or if the front side is an area parallel to the upper surface. The assumption has been made that the applicant is referring to the front side as being the upper region of the cushion or top and that the rear side is the lower region of the cushion or bottom.

9. With regards to Claims 26-29, the claims are considered to be vague and confusing as to the interconnection various structural elements. For example, Claim 26 reads "at least one heating conductor arranged in at least one intermediate space between at least two support elements in the intermediate layer..." this language does not make it clear as to the interconnection and placement of the elements within the support structure. It appears that the heating conductor actually surrounds the support elements (as seen in Figure 23), so it is unclear how it could be in an "intermediate space." Clarification of the relationship between the intermediate spaces, heating conductor and intermediate layer is needed.

10. The examiner notes that Claims 12-25 and 30 are rejected under 35 U.S.C. 112, second paragraph due to the fact that they are dependent upon a rejected claim.

Claim Rejections - 35 USC § 102

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

12. Claims 11-12,15-16,18-19, and 22-24 are rejected under 35 U.S.C. 102(b) as being anticipated by Fourrey (US 6,291,803 B1).

13. In re Claim 11, with reference to Figure 4, Fourrey discloses a climate control device for a vehicle seat comprising:

- a cushion core (12) for supporting a passenger;
- an upper air distribution device (3a) at a front side of the cushion core (12) facing the passenger to distribute air along the front side of the cushion core (12);
- a lower air distribution device (15) at a rear side facing away from the passenger to distribute air along the rear side of the cushion core (3); and
- a connecting device (13) for transferring air between the first (3a) and second air distribution devices (15), wherein each of the upper air distribution device (3a), lower air distribution device (15) and connecting device (13) include an elongated hollow space (shown below, 8a,13 and 17), and wherein at least one supporting element (11) in the form of a spring is provided in an air-conducting cross-section of at least one such hollow space (8a).

14. In re Claim 12, with reference to Figure 4, Fourrey discloses that at least one of the upper air distribution device (3a), lower air distribution device (15) and connecting device (13) is provided with a base layer (8); an intermediate layer (6) and a cover layer (4), the layers being arranged so as to at least partially overlap one another, and wherein the intermediate layer (6) has at least one support element (11) for the transmission of mechanical loads between the base layer (8) and cover layer (4).

15. In re Claim 13, with reference to Figure 4, Fourrey discloses functional elements (27) arranged a space between the base layer (8), cover layer (4) and the support element (11).

16. In re Claim 15, with reference to Figure 3, Fourrey discloses that the functional element is an electrical conductor (27, col. 6, lines 10-40).

1. In re Claim 16, with reference to Figure 3, Fourrey discloses that the electrical conductor comprises at least one heating component (27).

17. In re Claims 18 and 19, with reference to Figure 4, Fourrey discloses that the connecting device (13) comprises at least one recess in the cushion core (12) connected to an intermediate layer of the upper air distribution device (3a) or the an intermediate layer of the lower air distribution device (15) so as to permit the passage of air.

18. In re Claim 22, with reference to Figure 4, Fourrey discloses the cushion core (12) comprises a plurality of recesses (13) which connect a plurality of individual sections of an intermediate layer (6) arranged on the cushion core (12).

19. In re Claim 23, with reference to Figure 4, Fourrey discloses that the plurality of sections (6) are separated from one another and spaced apart.

20. The examiner presumes that the separation of the intermediate layer of Fourrey is achieved due to the presence of the support elements that sections off parts of the intermediate layer. This is considered to be equivalent to the applicant's plurality of spaced apart sections.

21. In re Claim 24, with reference to Figure 4, Fourrey discloses an essentially liquid-impermeable layer (9) arranged on a side of an intermediate layer facing the cushion core (12), (col. 5, lines 25-30).

Claim Rejections - 35 USC § 103

22. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

23. Claims 25- 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fourrey (US 6,291,803 B1).

24. In re Claim 25, Fourrey disclose the seat as described above, but fails to disclose that the essentially liquid-impermeable layer comprises the same material as the cushion core.

25. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the cushion out of the same liquid-impermeable material as the layer, since it has been held to be within the general skill of a worker in the art to

select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

26. In re Claims 26 and 27, with reference to Figure 4, Fourrey discloses at least one heating conductor (27) arranged in at least one intermediate space (5) between at least two support elements (11) in the intermediate layer (8).

27. In re Claims 28 and 29, with reference to Figure 4, Fourrey discloses a plurality of elongated intermediate spaces formed by the support elements (11), with a heating conductor (27) above these spaces, but fails to disclose that the heating conductors are arranged in at least two such intermediate spaces.

28. It would have been obvious matter of design choice to modify Fourrey by having the heating element (27) arranged in the support elements, in order to prevent overheating of the seating element, since applicant has not discloses that having the heating elements arranged in the spaces solves any stated problem or brings about unexpected results.

29. In re Claim 30, Fourrey discloses the support structure as described above, but fails to disclose that the heating element is fixed by an adhesive strip arranged substantially perpendicular to the intermediate space.

30. It would have been obvious matter of design choice to modify Fourrey by having the heating element secured in place by adhesive strips, since applicant has not discloses that having the adhesive strips solves any stated problem or brings about unexpected results.

31. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fourrey (US 6,291,803 B1) in view of Diemer et al. (US 2004/0036325 A1).

32. In re Claim 14, Fourrey discloses the support element as described above, but fails to disclose the use of a sensor for detecting pressure or temperature.

33. However, Diemer et al. teaches a surface heating system that includes a functioning unit which can contain a special seat occupancy sensor, a heat sensor or temperature gauge.

34. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the heated pad of Fourrey with the heating sensor of Diemer et al., in order to allow for detection of a passenger in order to enable heating of the seat.

35. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fourrey (US 6,291,803 B1) in view of Kochman et al. (US 6,229,123 B1).

36. In re Claim 17, Fourrey discloses the support element with a heating component as described above, but fails to disclose that the heating component comprises a PTC element.

37. However, Kochman et al. teaches a textile heater that includes a PTC material for temperature self limiting control.

38. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a heating component with PTC characteristics as taught

by Kochman et al., in order to provide temperature self limiting control for the heated seat of Fourrey.

39. Claim 20 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fourrey (US 6,291,803 B1) in view of Faust et al. (US 5,934,748).

40. In re Claims 20 and 21, Fourrey discloses the seating system as described above, with the connecting device being place within the seat cushion, but fails to disclose that the connecting device can be placed around the seat cushion.

41. However, with reference to Figure 1, Faust et al. teaches a vehicle seat with temperature control that includes a lower air distribution area that is then routed around the support element (31) in order to connect with an upper distribution device (18).

42. Therefore, because these both the inner connecting device and outer connecting device were art-recognized- equivalents at the time the invention was made, one of ordinary skill in the art would have found obvious to substitute the inner connecting device for connecting device that is routed around the seat.

Conclusion

43. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Mineqishi et al. (US 2004/0104607 A1) discloses a breathable seat with a connecting device through the central portion of the seat. Gielda et al. (US 2002/0145312 A1) teaches a climatized seat with upper and lower distribution areas with a central connecting section. Anderson et al. teaches a ventilation seat with connecting devices that extend around the exterior of the cushion core.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KAITLIN A. WILSON whose telephone number is (571)270-3206. The examiner can normally be reached on Monday - Friday (7:00am-4:30pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Dunn can be reached on (571)272-6670. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/K. A. W./
Examiner, Art Unit 3636

/David Dunn/
Supervisory Patent Examiner, Art Unit 3636